

## REMARKS

This Amendment is in response the Final Office Action mailed on September 15, 2008. Claims 1, 19, 41 and 49 have been amended. Claims 1-13, 15-35 and 37-56 are pending. Reconsideration of the present application, in view of the above amendments and the following remarks, is respectfully requested.

Claims 1-13, 15-35 and 37-56 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,193,397 to Tucker et al (“Tucker”).

The present invention is directed to an infusion apparatus and a method of infusing medication as represented by the pending claims. The apparatus includes a medication reservoir and a carrier reservoir. By separating these two reservoirs the overall size of the implantable apparatus can be reduced because relatively high concentrated medication can be contained in one reservoir while the carrier fluid, for example saline, is contained in the carrier reservoir. In addition, the number of times the patient would need a refill of the medication can be reduced. To achieve this goal, the medication and the carrier must mix in a mixing chamber sufficiently to allow for dilution of the medication and carrier fluids so that the patient will receive the proper dose. As illustrated in Figures 4A and 4B, in one embodiment the mixing chamber is a microfluidic chip 128. The chip includes a pathway 134 that includes convolutions to allow the medication sufficient contact time with the carrier to allow for thorough mixing.

Independent claims 1, 19, 41 and 49 have been amended above to make it clear that the mixing chamber is a microfluidic chip that includes **a capillary pathway disposed in a serpentine pattern** (emphasis added). As Applicant’s have previously pointed out, Tucker’s mixing chamber 88 is as taught by Tucker “formed in a radially recessed portion 90 in the side wall of housing section 10a as best seen in FIG. 2” of Tucker (see Col. 7, lines 3-6 of Tucker).

Thus, despite the Examiner’s broad interpretation of Tucker’s chamber 88 to be “considered a microfluidic chip” “because it is a small portion of a device that is already small enough to be implantable. It is considered to be a chip because it is a small thin component.” While Applicant’s respectfully disagree with the Examiner’s

conclusion, even this broad of a reading of Tucker does not permit one to read Tucker's chamber 88 in recessed portion 90 in the side wall of the housing to be a microfluidic chip that includes **a capillary pathway disposed in a serpentine pattern** (emphasis added) as required by the independent claims of the present application. Thus, claims 1-13, 15-35 and 37-56 are allowable.

Should there be any remaining or further questions, the Examiner is requested to place contact the undersigned directly.

Respectfully submitted,

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December 15, 2008